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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of

The Development of Operational, Technical
And Spectrum Requirements For Meeting
Federal, State and Local Public Safety Agency
Communication Requirements Through the
Year 2010

Establishment of Rules and Requirements
For Priority Access Service

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) WT Docket No. 96-86
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To: The Commission

**JOINT REPLY COMMENTS OF
AMERICAN ASSOCIATION OF
STATE HIGHWAY AND TRANSPORTATION OFFICIALS,
FORESTRY CONSERVATION COMMUNICATIONS ASSOCIATION,
INTERNATIONAL ASSOCIATION OF FIRE CHIEFS, INC.,
INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES,
INTERNATIONAL MUNICIPAL SIGNAL ASSOCIATION, AND
NATIONAL ASSOCIATION OF STATE FORESTERS**

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Dated: January 26, 1998

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SUMMARY

The record in this proceeding supports the adoption of a state planning approach, backed by a strong national plan, for implementation of the new public safety allocation from the 746-806 MHz band. Many commenting parties, including the Joint Commenters, have described significant practical, political and other deficiencies that have plagued the existing regional planning regime. The proposed state planning approach would retain the positive elements of regional planning (e.g., state and local involvement in spectrum assignment decisions), while eliminating or minimizing the most substantial drawbacks (e.g., imbalanced participation and representation in the planning process). Such an approach would also address the concerns of a number of commenting parties regarding the identification of a source of funding for the planning process, as each state would be responsible for the costs of determining how to assign and license the new spectrum within its borders.

Another important element of the spectrum assignment process is frequency coordination. The Joint Commenters strongly urge the Commission to endorse competitive coordination procedures modeled on those adopted in the Commission's spectrum "refarming" proceeding. The benefits to be derived from competition -- i.e., lower coordination costs and better service -- are undeniable, and no persuasive counter-arguments have been presented for extending APCO's monopoly status at 800 MHz to this new band. In short, the right to choose among coordinators would be in the best interests of the public safety community.

The Joint Commenters also believe that the Commission should not mandate a baseline digital standard for interoperability communications. To begin with, there are serious questions about the process through which the Project 25 standard has been developed. Further, many public safety agencies have limited resources and cannot afford to purchase new digital equipment at this time. Accordingly, the Commission should adopt analog FM as the baseline technology for interoperability spectrum.

Finally, to maximize the utility of the new public safety allocation, the Joint Commenters recommend that the Commission allow public safety agencies to share spectrum with other government functions and private entities that have public safety responsibilities.

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The American Association of State Highway and Transportation Officials ("AASHTO"), the Forestry Conservation Communications Association ("FCCA"), the International Association of Fire Chiefs, Inc. ("IAFC"), the International Association of Fish and Wildlife Agencies ("IAFWA"), the International Municipal Signal Association ("IMSA") and the National Association of State Foresters ("NASF") (collectively referred to herein as "Joint Commenters"), by their attorneys, respectfully submit these Reply Comments in response to Comments filed by other participants regarding the Second

Notice of Proposed Rule Making released in the above-captioned matter on October 24, 1997.^{1/}

I. REPLY COMMENTS

The Joint Commenters have reviewed the Reply Comments being prepared by the National Public Safety Telecommunications Council ("NPSTC") in the above-captioned matter and generally concur with the positions expressed therein. As was the case with the Joint Commenters' initial Comments, the purpose of these separately-filed Reply Comments is to respond to certain points that NPSTC has elected not to address and/or about which the charter members of NPSTC have been unable to reach a consensus.

A. The Commission Should Implement a State Planning Approach, Backed by a Strong National Plan

In their Comments, the Joint Commenters proposed that NPSTC be responsible for developing a strong national plan which would be implemented by state, rather than regional, planning committees. In support of this position, the Joint Commenters described a number of problems plaguing the existing regional planning approach which could be alleviated through the adoption of a national plan "with teeth" and the use of state planning committees. Such problems include the existence of significant obstacles to participation in regional planning by agencies with limited resources and the lack in

^{1/} 62 Fed. Reg. 60,199 (Nov. 7, 1997). By *Order* dated December 19, 1997, the Commission extended the deadline for filing Reply Comments in this matter from January 12, 1998 to January 26, 1998.

many regions of procedures to ensure the prompt and equitable acceptance and processing of applications, to monitor system implementation and prevent channel hoarding and to resolve conflicts between the different states, areas or agencies contained within a single region.

A number of other commenting parties also expressed dissatisfaction with the regional planning process. For instance, the Commonwealth of Pennsylvania -- like the Joint Commenters -- recommended that regional boundaries be redrawn such that an entire state would fall within one region. In this regard, the Commonwealth noted that its division into two regions has hampered, rather than facilitated, planning efforts due to time-consuming debates with adjacent regional committees, an inability to coordinate statewide channel assignments, conflicting assignments in adjacent metropolitan areas and a lack of coordination between regions. (Comments of the Commonwealth of Pennsylvania at 11). Similarly, the Brazos County Emergency Communications District ("Brazos County") and the NPSPAC Regional Review Committee, Region 49 ("Region 49") stated that "the existence of six separate Regions within Texas has caused considerable work for some individuals with statewide responsibilities"; accordingly, these parties "would prefer that planning for the 746-806 MHz spectrum be done as a single Region." (Comments of Brazos County at 2; Comments of Region 49 at 3).

Further, several commenters echoed the Joint Commenters' concerns regarding a lack of representation on regional committees by all types of public safety entities. As

the Federal Law Enforcement Wireless Users Group ("FLEWUG") explained, the existing regional committees have lacked sufficient oversight and often have been dominated by law enforcement agencies from large metropolitan areas. FLEWUG therefore urged the Commission to adjust regional committee memberships so as to include members of federal public safety agencies, small local public safety agencies and "under-represented public safety disciplines such as fire departments and emergency medical personnel." (Comments of FLEWUG at 12 and 18). See also Comments of the National League of Cities, *et al.* at 5 (there must be balance on regional planning committees so that no one agency or type of public safety service can dominate the process).

Even some parties that generally support regional planning have acknowledged that certain modifications may be appropriate, e.g., to combine or separate particular regions or otherwise alter regional boundaries. (See Comments of the Association of Public-Safety Communications Officials-International ("APCO") at 5; Comments of the State of California at ¶ 32).^{2/} Noting that it would be unduly burdensome to require state agency representatives to travel outside of the state in order to participate in regional

^{2/} The Joint Commenters disagree with APCO's assertion, however, that "modern communications tools such as the Internet and teleconferencing" will facilitate participation in regional planning by agencies that cannot afford to send representatives outside of state boundaries. (Comments of APCO at 4-5). While such modern means of communication certainly make it easier to exchange information in a prompt and efficient manner, there is simply no substitute for direct, face-to-face involvement in the process of implementing the new spectrum allocation -- a process of potentially great importance to all public safety spectrum users.

planning, the State of California recommended “that regions not involve multiple states unless there is significant interaction between radio systems.” (Comments of the State of California at ¶ 32).

Taking these principles one step further, the Joint Commenters believe that multiple-state regions are inappropriate even where such system interaction is present. Contrary to the assertions of certain commenting parties,^{3/} the existence of multi-state metropolitan areas does not necessitate the use of regional planning committees. To determine frequency assignments near state boundaries and in major metropolitan areas encompassing more than one state, the implicated state committees simply would need to coordinate their activities, much as representatives of varying states have worked together on regional committees spanning cross-border areas and for mutual aid and other coordination purposes in multi-jurisdictional metropolitan areas. The primary advantage to the state planning approach would be that each state (whether large or small, urban or rural) would be equally represented by its own planning committee in the development of a mutually agreeable resolution to inter-state issues. This, in turn, will increase the likelihood that an equitable and spectrum-efficient outcome will be attained.

Apart from the concerns about multi-state metropolitan areas discussed above, the parties who favor extending the existing regional planning approach to the new allocation

^{3/} See Comments of the New York City Transit Authority at 2-3; Comments of the New York State Police at 9.

typically offered only the conclusory statement that regional planning has “worked well” and/or contended that such an approach is advantageous because the 55 regional committees already are in place.^{4/} The fact that regional planning apparently has “worked well” for some parties, while others perceive significant shortcomings in the process, cogently illustrates that there are serious inequities and imbalances under the existing regime. Such inequities should not be perpetuated merely because it would be simplest to use committees that already have been formed. Moreover, in many instances, the implementation of a state planning approach would not require any changes to the boundaries of the existing regions, as a number of these regions presently are defined by a single state’s boundaries. Given the critical problems that have been identified with respect to the regional planning process, the Joint Commenters urge the Commission to seize this opportunity to implement a state planning approach. Backed by firm national guidelines, such an approach would facilitate participation by, and promote fair and balanced treatment of, all interested public safety entities.

B. The State Planning Process Should be Funded by the Individual States

Claiming that inadequate funding for the basic operating expenses and activities of the existing NPSPAC regional planning committees has been a significant obstacle, a number of commenters have requested the establishment of a mechanism for funding the

^{4/} See Comments of the California Public-Safety Radio Association (“CPRA”) at 3; Comments of the City of Long Beach, California at 4; Comments of the City of Richardson, Texas at 2-3; Comments of Motorola, Inc. at 4; Comments of Region-20 Public Safety Review Committee at 5.

implementation of the new allocation.^{5/} The Joint Commenters believe, however, that the adoption of a state planning approach would eliminate the funding problem (to the extent that there is one), as well as the need for the Commission to become involved in funding issues.

Under the state planning process envisioned by the Joint Commenters, each state would be responsible for funding the activities of its own planning committee. Specifically, each governor would designate the appropriate state and local agencies to be represented on that state's committee (e.g., state police, fire marshals, department of conservation, department of transportation, etc.) and determine what particular state funds will be used to finance the effort. Just as the states presently provide the funding to develop, construct and operate the communications systems utilized by state agencies to serve state needs, it is reasonable to expect the states to bear the costs of determining how to assign and license the new spectrum allocation within their borders.^{6/}

^{5/} See, e.g., Comments of APCO at 7; Comments of Brazos County at 3; Comments of the City of Richardson, Texas at 3; Comments of the New York State Police at 9-10; Comments of the State of California at ¶ 33.

^{6/} The Joint Commenters also note that an external source of funding should not be needed for the development of the national plan. If, as the Joint Commenters propose, NPSTC is charged with carrying out this task, the funding of the national planning process by the various members of NPSTC would be consistent with and in furtherance of the basic goals and missions underlying these organizations.

C. A Competitive Coordination Model Should be Adopted

The Joint Commenters recommended in their Comments that the Commission adopt competitive frequency coordination procedures for the new public safety allocation whereby any of the certified public safety coordinators should be permitted to provide coordination. Like in the Commission's "refarming" proceeding for spectrum below 800 MHz, the introduction of competitive coordination procedures in the 746-806 MHz band "should result in lower coordination costs and better service to the public."^{7/}

As in other similar situations, APCO and some of its affiliates and supporters have urged the Commission to designate APCO as the sole coordinator for the new allocation.^{8/} In its Comments, APCO attempts to link its bid to become monopoly coordinator for the new spectrum to a promise of upfront funding for the planning process:

APCO has tentatively agreed to provide reasonable direct financial support for regional planning activities. However, APCO's ability to provide this level of technical, organizational, and financial support is contingent upon it being able to recover the cost of that support through frequency coordination fees . . . Therefore, it is essential for APCO to be designated as [sole] frequency coordinator for the newly allocated spectrum.

(Comments of APCO at 7-8).

^{7/} Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, PR Docket No. 92-235, *Second Report and Order*, March 12, 1997, at ¶ 38.

^{8/} See Comments of APCO at 7-9; Comments of CPRA, a Chapter of APCO at 4; Comments of the City of Long Beach, California at 5.

The Joint Commenters strongly urge the Commission to reject APCO's offer of funding, as well as its efforts to preclude competition in the coordination process. Notwithstanding APCO's attempt to link these issues, the Commission's determination as to the frequency coordination model which best would serve the interests of the public safety community and the public at large should not be colored by the separate question of how the planning process should be funded. In any event, the adoption of a state, rather than regional, planning approach would address the concerns that some parties have raised about a lack of adequate funding. (See Section I.B., supra). APCO itself has acknowledged that "[i]f other reasonable forms of funding and support for regional planning can be identified, then perhaps a system of multiple coordinators can be devised." (Comments of APCO at 9). Accordingly, the Commission should move forward with a competitive coordination approach, coupled with state planning.

Other arguments presented by APCO in support of its designation as sole coordinator do not withstand scrutiny. In particular, APCO contends that it is the only coordinator: (1) "with experience in working with regional planning and in coordinating spectrum for wide-area, multi-agency systems in the 800 MHz band"; (2) with a membership base that includes all aspects of public safety communications; and (3) with a network of local frequency advisors in each of the public safety planning regions. (Comments of APCO at 8). APCO's premises clearly are wrong. First, many local coordinators and individuals who participate in the regional planning process not only are members of APCO, but also are members, or representatives of members, of AASHTO,

FCCA, IAFC and IMSA. Thus, each of these organizations is experienced in 800 MHz band planning. Furthermore, as the Joint Commenters explained in their Comments, APCO's experience in the regional planning process and its local frequency advisors do not make it better equipped to coordinate applications for frequency assignments from the new allocation. Effective coordination of this spectrum requires only the ability to make frequency assignments in accordance with the national and state/regional plans to be adopted and all other applicable rules and policies. Reliance upon a centralized data base such as that currently utilized by all existing public safety coordinators except APCO would greatly facilitate this process. (See Comments of the Joint Commenters at 19). Moreover, each of the certified public safety coordinators has many years of coordination experience which readily could be carried over into the 746-806 MHz band. APCO's existing position as exclusive coordinator for the 800 MHz public safety bands should not be used as a rationale for extending its monopoly status into the new band.

Finally, while APCO boasts of a "broad membership base which includes all aspects of public safety communications," (Comments of APCO at 8), it is IAFC/IMSA, FCCA and AASHTO, rather than APCO, which represent their respective public safety services in a policy-making and/or managerial capacity. These organizations function as spokespersons for their discrete public safety sectors on program and public policy matters. APCO, by contrast, is comprised of operational and technical personnel, a substantial portion of whom are dispatchers and otherwise are involved only in the design and operation of their local communications systems. (See Comments of APCO at 1).

With multiple coordinators, each public safety entity will have the ability to determine for itself which coordinator best represents its interests and will provide it with the most attractive service. The availability of such a choice can only benefit the public safety community.

D. The Commission Should Not Mandate the Project 25 Standard or Any Other Digital Baseline for Interoperability

Several commenting parties have advocated adoption of the Project 25 standard as the digital baseline for interoperability communications.^{9/} The Joint Commenters have serious concerns, however, about the manner in which this standard was developed. The American National Standard Institute ("ANSI") maintains that "how standards are developed and established is a more important question than which standards may result," and that the "process of developing standards must be in harmony with the needs of consumers, manufacturers and regulators as a whole."^{10/} The record in this proceeding raises questions as to whether the Project 25 process fell short of achieving ANSI's fundamental due process and consensus requirements.

The Project 25 process certainly has not been "in harmony" with all public safety users and manufacturers. To begin with, many public safety agencies, including those

^{9/} See, e.g. Comments of APCO at 12; Comments of Project 25 (throughout); Comments of the State of California at ¶ 21.

^{10/} See Comments of ANSI in GC Docket No. 96-42 (relating to its role in the Voluntary Consensus Standards System).

represented by the Joint Commenters, were not part of the Project 25 decision-making body. Further, the baseline decisions regarding the Project 25 technology were and are within the sole purview of the Project 25 Steering Committee. It is also noteworthy that the Project 25 Steering Committee, unlike an ANSI accredited organization, is not required to respond to objections raised by participants and that the process followed does not provide such participants an opportunity to have their objections reviewed by an impartial body.

For the voluntary standards development process to be valid and effective, the Joint Commenters believe that the process must be in conformance with ANSI-like due process and consensus requirements. It is the view of the Joint Commenters, therefore, that the Commission must take charge of the process in the event that it concludes that a digital interoperability standard ultimately will be necessary for public safety communications. If the Commission does not want to oversee such a standard-setting process, the Commission's rules -- at the very minimum -- either should require that such standards be developed in accordance with the full panoply of ANSI procedures or should adopt requirements similar to those established by Congress in Sections 273(d)(4) and (d)(5) of the Telecommunications Act of 1996 to ensure that the activities of non-accredited organizations meet minimum elements of openness, fairness and due process.

In light of the foregoing, the Joint Commenters disagree with those commenting parties who suggest that the Project 25 process common air interface be adopted as the

digital baseline technology for interoperability in the 746-806 MHz band^{11/} and that the Commission should allow the public safety community to develop user-driven standards without any oversight.^{12/} Project 25 proponents and opponents have argued at great length about whether the specification will achieve its stated goals of interoperability, spectrum efficiency and a competitive marketplace and whether the process followed by the Project 25 Steering committee met simple due process standards.^{13/} While the Joint Commenters take no position on the relative merits of any of the substantive arguments presented by the proponents or opponents of Project 25, they believe that valuable lessons can be learned from the controversy surrounding the development and adoption of the Project 25 specification. In short, if the process is not sound, the results cannot be trusted.

As a related matter, the Joint Commenters are in accord with the Public Safety Wireless Advisory Committee and those parties in this proceeding that advocate the adoption of analog FM as the baseline technology for interoperability channels.^{14/}

^{11/} See note 9, *supra*.

^{12/} See, e.g., Comments of Motorola, Inc. at 4

^{13/} See, e.g., *A Need to Be Heard: Will Project 25 Meet Public Safety Communications Needs in 1995 and Beyond?*, Charles L. Jackson, Strategic Policy Research, Inc. (July 1993); *Competitive Considerations Associated With APCO Project 25*, Hatfield Associates, Inc. (Jan. 15, 1996); *Public Interest Standard Setting for Public Safety Wireless*, Michael L. Katz, The Tilden Group, LLC; Reply Comments of Charles L. Jackson in response to First Notice of Proposed Rulemaking in WT Docket No. 96-86.

^{14/} See, e.g., Comments of Ericsson Inc. at 7; Comments of the State of Florida at 1.

Because most public safety equipment in operation today uses analog FM,^{15/} adoption of such a baseline standard would enable some public safety entities -- particularly those that cannot afford to purchase new, more expensive digital equipment in the immediate future -- to retune existing 800 MHz radios for use in the 746-806 MHz band. While the adoption of a digital baseline standard may be appropriate if and when digital equipment becomes available and affordable in this band, requiring public safety licensees to employ digital equipment for interoperability would not be in the public interest at this time.^{16/}

E. The Development of "Shared Resource Systems" on Public Safety Spectrum Should be Encouraged

The Commission's rules presently place certain restrictions on the manner in which public safety and other licensees may share their systems with other entities. For instance, Section 90.179(a) effectively prohibits a public safety licensee from sharing frequencies with parties that would not be eligible to hold a separate authorization for those frequencies (*i.e.*, non-public safety eligibles). 47 C.F.R. § 90.179(a). The Joint Commenters believe that the extension of this provision to the new allocation would impede efficient use of this spectrum.

^{15/} Comments of Ericsson Inc. at 7; Comments of the State of California at ¶ 20.

^{16/} To the extent that the foregoing position may differ somewhat from that expressed by NPSTC in its Comments and/or Reply Comments, the Joint Commenters support the views set forth herein, rather than the NPSTC position.

Where a particular licensee -- public safety or otherwise -- has excess capacity on its system, it makes sense from an efficiency standpoint to permit that licensee to share its system with other users. Often, the logical choice for public safety licensees would be to share with other government entities, including administrative (non-public safety) agencies, or with "critical infrastructure" providers such as utilities and pipelines. As long as the system is used primarily for public safety purposes, sharing on an ancillary basis with other government users or "quasi public safety" private entities would be consistent with the provisions of the Balanced Budget Act of 1997 which define eligibility for purposes of the new allocation. See 47 U.S.C. § 337(f). Accordingly, the Joint Commenters urge the Commission to specify that such sharing will be allowed in the 746-806 MHz band.

II. CONCLUSION

The Joint Commenters believe that a three-tiered approach consisting of a strong national plan, state planning committees and competitive coordination would be in the best interests of public safety entities and the communities they serve. Additionally, the Joint Commenters oppose the adoption of a digital baseline standard for interoperability communications -- including the Project 25 specification -- and advocate the implementation of permissive sharing rules with respect to the new allocation.

WHEREFORE, THE PREMISES CONSIDERED, the American Association of State Highway and Transportation Officials, the Forestry Conservation

Communications Association, the International Association of Fire Chiefs, Inc., the International Association of Fish and Wildlife Agencies, the International Municipal Signal Association and the National Association of State Foresters respectfully urge the Federal Communications Commission to act in a manner fully consistent with the views expressed herein.

Respectfully submitted,

**AMERICAN ASSOCIATION OF STATE
HIGHWAY AND TRANSPORTATION
OFFICIALS**

**FORESTRY CONSERVATION
COMMUNICATIONS ASSOCIATION**

**INTERNATIONAL ASSOCIATION OF
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